
UTAH LABOR COMMISSION

BOWEN M. FERRE,

Petitioner,

vs.

**PETERSEN INC. and WORKERS
COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0425

Bowen M. Ferre asks the Utah Labor Commission to review Administrative Law Judge Hann's dismissal of Mr. Ferre's claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Ferre filed an application for hearing with the Commission to compel Petersen Inc. and its insurance carrier, Workers Compensation Fund (referred to jointly as "Petersen" hereafter), to pay benefits for injuries Mr. Ferre suffered while working for Petersen on January 14, 2004. Included with Mr. Ferre's application was an opinion from Dr. Brandt, Mr. Ferre's treating physician, that Mr. Ferre had suffered a permanent 10% impairment as a result of his work injuries. On June 7, 2005, Petersen responded to Mr. Ferre's application by admitting the accident and injury. However, Petersen asserted Mr. Ferre already had been paid the benefits that were due him. On that basis, Petersen moved for dismissal of Mr. Ferre's application.

Pursuant to Commission Rule R602-2-1.J, Mr. Ferre had until June 22, 2005, to respond to Petersen's motion to dismiss. Mr. Ferre did not file a timely response. On June 29, 2005, Judge Hann granted Petersen's motion and dismissed Mr. Ferre's claim without prejudice on the grounds that Mr. Ferre had presented "no outstanding justiciable issues."

On July 7, 2005, six business days after Judge Hann had granted Petersen's motion to dismiss, Judge Hann received an untimely response from Mr. Ferre. This response was limited to the submission of an impairment rating prepared by Dr. States on June 14, 2005, that opined Mr. Ferre had suffered a permanent 16% impairment as a result of his work injuries.

In a letter dated July 14, 2005, Judge Hann advised Mr. Ferre that she had already granted Petersen's motion to dismiss. Judge Hann outlined two courses of action open to Mr. Ferre: 1) he could file a new application for hearing for the purpose of claiming additional permanent partial

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disability compensation; or 2) he could request review of Judge Hann's order dismissing Mr. Ferre's previous application.

On July 18, 2005, Mr. Ferre took the second option outlined by Judge Hann and requested Commission review of Judge Hann's order. In his request for review, Mr. Ferre reiterated that he had obtained a new and higher impairment rating from Dr. States. However, he did not explain his failure to submit a timely response to Petersen's motion to dismiss, nor did he argue that Judge Hann had erred in granting Petersen's motion to dismiss.

DISCUSSION

As already noted, Petersen moved for dismissal of Mr. Ferre's claim on June 7, 2005. Commission rules gave Mr. Ferre until June 22, 2005, to respond. Mr. Ferre could have defeated Petersen's motion to dismiss by submitting Dr. States' impairment rating. However, Mr. Ferre did not submit the report until the response period had expired and Judge Hann had already granted Petersen's motion to dismiss.

As a general rule, the Commission favors resolution of workers' compensation disputes by a decision on the merits, after the parties have had an opportunity for hearing. But in this case, the Commission is confronted with Mr. Ferre's unexplained failure to respond to Petersen's motion to dismiss, coupled with Mr. Ferre's failure to raise any substantive or procedural objections to Judge Hann's order of dismissal. Under these circumstances, the Commission affirms Judge Hann's dismissal of Mr. Ferre's application "without prejudice."¹

ORDER

The Commission affirms Judge Hann's order dismissing Mr. Ferre's claim without prejudice. It is so ordered.

Dated this 18th day of January, 2007.

Sherrie Hayashi
Utah Labor Commissioner

¹ Because Mr. Ferre's application is dismissed "without prejudice," he may renew his claim for additional benefits by filing a new application for hearing with the Labor Commission. As to Mr. Ferre's allegation of improper conduct by Petersen's insurance adjuster, such complaints can be presented to the Utah Insurance Commission.